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The Research Foundation of the State University of New York Office of Sponsored Programs and Local 1104, Communication Workers of America, AFL-CIO. Cases 3-RC-11184, 3-RC-11313, and 3-RC-11410

June 29, 2007

DECISION ON REVIEW AND ORDER REMANDING

BY CHAIRMAN BATTISTA AND MEMBERS KIRSANOW
AND WALSH

On March 14, 2005, the Acting Regional Director for Region 3 issued a Supplemental Decision and Order finding that under *Brown University*, 342 NLRB 483 (2004), research project assistants (RPAs) at the Employer's Albany, Buffalo, and Syracuse, New York locations are not employees within the meaning of Section 2(3) of the Act. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Petitioner filed a timely request for review of the Acting Regional Director's Supplemental Decision and Order, contending that the RPAs are statutory employees. The Employer filed an opposition.

By Order dated September 20, 2005, the Board¹ granted the Petitioner's request for review. Thereafter, the Employer filed a brief on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record, including the Employer's brief on review, we reverse the Acting Regional Director's Supplemental Decision and find that the Board's decision in *Brown University* is inapplicable to this Employer and that the RPAs are statutory employees. Accordingly, we reinstate the petitions and remand this case to the Regional Director for further appropriate action.

The Petitioner filed three petitions seeking to represent RPAs at the Employer's Albany, Buffalo, and Syracuse locations.² The Employer is a private, not-for-profit "educational corporation" established under the laws of the State of New York and is chartered by the New York Board of Regents. The parties stipulated that the Employer "is not an academic institution and therefore does not issue academic degrees." The parties also stipulated

that the Board has statutory jurisdiction over the Employer and that it is the sole employer of the RPAs.

The Employer's corporate charter states that the Employer's purpose is to "assist in developing and increasing the facilities of State University of New York to provide more extensive educational opportunities . . . by making and encouraging gifts, grants, contributions and donations," "[t]o receive, hold and administer gifts or grants . . . of benefit to and in keeping with the educational purposes . . . of the State University of New York"; and "to finance . . . studies and research . . . of benefit to and in keeping with the educational purposes . . . of the State University of New York [SUNY]." SUNY is a state university system with 64 campuses located throughout the State of New York. It is undisputed that SUNY is exempt from the Board's jurisdiction.

The parties stipulated that the Employer and SUNY agreed in 1977 that the Employer would be assigned management and administrative authority over sponsored research programs at SUNY. Under that agreement, the Employer is responsible for the management and fiscal administration of awards made by government and private donors for sponsored research programs at SUNY. All funds awarded by the sponsors are to be paid to and administered by the Employer in accordance with the terms and conditions of the grants. The agreement states further that the Employer shall employ necessary research and other personnel, "who shall be deemed to be employees of the [Employer] and not the University." The agreement also states that the Employer shall purchase necessary equipment and supplies and disburse funds for other approved purposes in connection with the research programs.

The petitioned-for RPAs are enrolled as students at their respective SUNY campuses. In their employment by the Employer, the RPAs are supervised by "Principal Investigators" or "Project Directors," who determine the pay rate for the RPAs based on minimums and maximums established by the Employer's Office of Sponsored Programs. The RPAs also are eligible for health care benefits that are paid from award funds administered by the Employer. The Employer compensates the RPAs directly, and the RPAs are placed and carried on the Employer's payroll by the Employer's Human Resources office. In stipulating that the Employer is the sole employer of the RPAs, the parties agreed that broad labor and employee relations policies applicable to the RPAs are promulgated and administered by the Employer as a private corporation that is separate and independent from SUNY. The Employer does not make any direct pay-

¹ Chairman Battista, and Members Liebman and Schaumber.

² By the Syracuse petition, the Petitioner also sought to represent Research Support Specialists. No party disputes that the Research Support Specialists are statutory employees.

ments to SUNY to fund the tuition that SUNY charges the RPAs as students enrolled at SUNY.

On March 13, 2002, April 11, 2003, and March 15, 2004, respectively, the Director issued a Decision and Direction of Election in connection with the several petitions at issue here, finding that the petitioned-for RPAs are statutory employees. The Employer filed a request for review of each Decision, and the Board granted review. Following the issuance of *Brown*, in which the Board majority³ found that the graduate student assistants at that university are not statutory employees, the Board on July 16, 2004, remanded these petitions to the Regional Director for further consideration consistent with *Brown*. On March 14, 2005, the Acting Regional Director issued the present Supplemental Decision, in which she found that the petitioned-for RPAs at each location are not statutory employees.

In the Supplemental Decision, the Acting Regional Director found that, like the relationship between the graduate student assistants and their university employer in *Brown*, the relationship between the RPAs and the Employer in this case is fundamentally educational, not fundamentally economic. To support this finding, the Acting Regional Director relied on the facts that the RPAs must be enrolled at SUNY to work for the Employer, their work assignments bear a substantial relationship to their dissertations, the Principal Investigator on their funded research project often simultaneously serves as their dissertation adviser, and they end their careers as RPAs once they receive their degrees from SUNY. While acknowledging that the Employer does not confer academic degrees, the Acting Regional Director nevertheless concluded that the RPAs have a fundamentally academic relationship with the Employer and therefore are not statutory employees under *Brown*.

In its request for review, the Petitioner contends that the Acting Regional Director misapplied *Brown* to this Employer because the Employer is not a private educational institution like *Brown* and the RPAs are employed solely by the Employer. We find merit in the Petitioner's contention.

In *Brown*, the Board majority found that graduate student assistants enrolled at *Brown* were not employees within the meaning of Section 2(3) of the Act. In that case, the facts demonstrated that *Brown* was a private university that confers undergraduate and graduate degrees. The petitioned-for graduate student assistants—teaching assistants, research assistants, and proctors—received awards from *Brown*'s academic departments,

and *Brown* paid the graduate student assistants' stipends from the awards and also paid their university tuition from other resources.

In interpreting Section 2(3) of the Act, the Board majority in *Brown* emphasized that it looks to the "the underlying fundamental premise of the Act," which is that "the Act is designed to cover economic relationships," and therefore the Board "will not assert jurisdiction over relationships that are 'primarily educational.'" *Brown*, 342 NLRB at 488. Because the graduate student assistants were "first and foremost" students and the "evidence demonstrate[d] that the relationship between *Brown*'s graduate student assistants and *Brown* [was] primarily educational," the Board found that the graduate student assistants were not employees within the meaning of Section 2(3) of the Act. *Id.*

We find, contrary to the Acting Regional Director and our dissenting colleague, that the Board's decision in *Brown* is inapplicable in this case. Unlike *Brown*, the Employer is not a university or college and does not confer degrees or admit students. It does not remit funds either to SUNY or to the RPAs to pay their SUNY tuition. Although the Employer is a not-for-profit "educational corporation," the parties stipulated that the Employer is "not an academic institution." Further, the RPAs are employed solely by the Employer.

Moreover, the undisputed evidence demonstrates the existence of an economic relationship between the RPAs and the Employer rather than an educational relationship, as in *Brown*. As discussed above, pursuant to an agreement with SUNY, the Employer receives, administers, and manages government and private donor awards for SUNY's sponsored research programs. Under that agreement, the Employer employs research and other personnel, including the RPAs, "who shall be deemed to be employees of the [Employer] and not the University." The RPAs are employed and receive compensation, including benefits, under awards administered by the Employer; their compensation is subject to the Employer's compensation benchmarks; and they are placed on the Employer's payroll by the Employer's Human Resources office. In addition, the parties stipulated that the Employer's labor and employment policies apply to the RPAs. The RPAs therefore clearly have an economic relationship with the Employer.⁴

³ Chairman Battista, and Members Schaumber and Meisburg (Members Liebman and Walsh, dissenting).

⁴ The dissent's attempt to equate the RPAs with the graduate student assistants in *Brown* is wide of the mark. Graduate students at SUNY are not required to serve as RPAs to obtain their degree. The vast majority of graduate students at SUNY never have served as RPAs and never will serve as RPAs. In contrast, the vast majority of graduate students at *Brown* have served or will serve as petitioned-for teaching assistants, research assistants, or proctors. 342 NLRB at 484 and fn. 11.

The Acting Regional Director's and our dissenting colleague's application of *Brown* to this case is based on the incorrect premise that the RPAs, like the graduate student assistants in *Brown*, have a primarily educational relationship with the Employer. But the evidence cited by the Acting Regional Director in support of that finding—that RPAs must be enrolled at SUNY to work for the Employer, that their work assignments bear a substantial relationship to their SUNY dissertations, that they end their RPA careers once they graduate from SUNY, and that the Principal Investigators on their funded research projects often simultaneously serve as their advisers on the dissertations they must complete to be awarded a graduate degree from SUNY—demonstrates the RPAs' primarily educational relationship with SUNY, not with the Employer.⁵ In sum, the petitioned-for RPAs have an educational relationship with SUNY, but an economic relationship with the Employer. The Acting Regional Director therefore erred in applying *Brown* to the facts of this case.⁶

Accordingly, we find that the RPAs are employees of the Employer within the meaning of Section 2(3) of the Act. We therefore reverse the Acting Regional Director's dismissal of the petitions and remand this case to the Regional Director for reinstatement of the petitions and for further appropriate action.

ORDER

The Acting Regional Director's dismissal of the petitions is reversed, the petitions are reinstated, and the case is remanded to the Regional Director for further appropriate action consistent with this Decision on Review.

Dated, Washington, D.C. June 29, 2007

Peter N. Kirsanow, Member

Dennis P. Walsh, Member

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⁵ The fact that the Employer's charter states that the purpose of the Employer is to assist SUNY to provide "educational opportunities" and to finance research in keeping with SUNY's "educational purposes" does not make the Employer's relationship with the RPAs a primarily educational relationship. The Employer and SUNY agreed in 1977 that the Employer would be assigned fiscal management and administrative authority over awards, and the parties stipulated that the Employer is not an academic institution. The Employer's relationship with the RPAs is therefore administrative and economic, not educational.

⁶ Member Walsh dissented in *Brown* and, for the reasons stated in that dissent, would find the RPAs in this case to be statutory employees in any event. He nevertheless agrees that *Brown* is distinguishable from this case.

CHAIRMAN BATTISTA, dissenting.

Like the Acting Regional Director, I would apply the Board's decision in *Brown University*¹ and find that the relationship between the research project assistants (RPAs) and the Employer is primarily educational rather than economic. Therefore, I would conclude that the RPAs are not employees under Section 2(3) of the Act.

My colleagues dismiss the relevance of *Brown* to the instant case by noting that, unlike the Employer, "Brown was a private university that confers undergraduate and graduate degrees." However this factual distinction *overlooks* the Employer's integral role in the RPAs' education.

In *Brown*, the Board relied on "the fundamental premise that the Act is designed to cover economic relationships." Thus the Board's "longstanding rule [is] that it will not assert jurisdiction over relationships that are 'primarily educational.'" Clearly, the relationship between the RPAs and SUNY is an educational one. However, that does not mean that the relationship between the RPAs and Employer is an economic one. That is the issue in this case.

To answer that question, I start with the undisputed fact the Employer is an "educational corporation." I then note that the Employer's charter states that its mission must be "in keeping with the educational purposes [of SUNY]." In essence, it "receives, holds and administers" grants on behalf of SUNY.

The 1977 agreement formalizing the relationship between SUNY and the Employer reveals that the two entities operate as close partners in conducting the University's research programs. Under that agreement, all sponsored research conducted on SUNY premises by SUNY faculty members is administered by the Employer. When supervising the RPAs, these faculty members are called "Principal Investigators" (PIs). When functioning in this capacity, they are employees of the Employer. These PIs develop grant proposals and incorporate them into joint applications from the University and the Employer. The awards of grants are made to the Employer "for and in conjunction with the University." Thus, the Employer participates in the educational mission of SUNY and serves much the same functions for the conduct of research at SUNY as *Brown* did for research by its graduate students.

Like the graduate assistants in *Brown*, the RPAs are required to be enrolled as full-time students at SUNY in order to receive and maintain their positions with the Employer.² They must actively conduct research to ob-

¹ 342 NLRB 483 (2004).

² My colleagues assert that graduate students at SUNY are not required to serve as RPAs. However, the issue here is not whether

tain their SUNY doctoral degree. Serving as an RPA with the Employer satisfies this academic requirement. Once the RPAs complete their academic requirements and obtain their degrees, their employment by the Employer comes to an end.

In sum, the RPA candidates for a doctoral degree must do research to get that degree, and that research must be done through the Employer. All of this far outweighs the fact that the RPAs are not employees of SUNY.

Moreover, as in *Brown*, the RPAs' research work is closely related to their studies at SUNY. The Employer's Student Titles Policy demands that an RPA be "engaged in work related to the student's education and training that leads to the fulfillment of academic requirements." The SUNY faculty member who serves as the principal investigator (PI) for a grant selects the RPAs for that project based on personal experience with the student at SUNY, the recommendation of another faculty member, or the student's expression of interest in the research. As the Acting Regional Director found, work as an RPA also advances the student's dissertation. The RPAs use their research data for academic purposes, including their dissertations. In addition, the research skills that the RPAs acquire are advantageous as they conduct their dissertation research. Finally, like their counterparts in *Brown*, the faculty member who serves as

the PI for the grant often serves as the RPA's adviser for his or her SUNY dissertation.

Also as in *Brown*, the RPAs only work on a part-time basis, typically 20 hours per week. They receive a stipend from the Employer, funded by the research grant. The amount of the stipend is not based on the number of hours worked, so that an RPA receives no additional money for working more than the scheduled 20 hours weekly. The above evidence indicates that, as in *Brown*, the RPAs are awarded stipends to assist them with their financial needs as students rather than to compensate them for their work.

In sum, the RPAs obtain their positions because of their status as full-time SUNY students, conduct research related to their studies under the direction of individuals who are members of the SUNY faculty, fulfill academic requirements and advance their dissertations through their work as RPAs, and must leave their positions upon completion of their studies.

Based on the substantial similarities between the relationships presented in this case and *Brown*, I would find that the RPAs are primarily students and are not employees within the scope of Section 2(3) of the Act.

Dated, Washington, D.C. June 29, 2007

Robert J. Battista,

Chairman

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graduate students are employees. Rather, the issue is whether the RPAs are employees. I conclude that *their* relationship to the Employer, like the relationship between that graduate assistants at Brown and Brown, is primarily an educational one. Accordingly, I disagree with the majority and find that *Brown* is directly relevant here.